Supreme Court, U.S.
FILED
FEB 14 1992
OFFICE OF THE CLERK

No. 90-1846

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1991

GEORGE F. DENTON, et al., Petitioners,

v.

MIKE HERNANDEZ, Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITIONERS' SUPPLEMENTAL BRIEF

DANIEL E. LUNGREN, Attorney General
of the State of California
GEORGE WILLIAMSON
Chief Assistant Attorney General
KENNETH C. YOUNG, Assistant Attorney General
JOAN W. CAVANAGH, Supervising
Deputy Attorney General
JAMES CHING, Supervising Deputy
Attorney General, Counsel of Record
1515 K Street, Suite 511
Sacramento, California 95814
Telephone: (916) 323-1948
Attorneys for Petitioners

PRELIMINARY STATEMENT

Petitioners submit the following citations to supplement the argument advanced by the United States as amicus curiae.

ARGUMENT

THE NINTH CIRCUIT HAS RULED THAT A PLEADING NOT WELL GROUNDED IN FACT UNDER RULE 11 IS FRIVOLOUS

The United States, as amicus curiae, has suggested that factual allegations are frivolous under section 1915(d) if no reasonable attorney or paying litigant would certify that they are "well grounded in fact" within the meaning of Rule 11 of the Federal Rules of Civil Procedure. **Brief for the United States** at 12. The Ninth Circuit, in an attempt to define sanctionable cases under Rule 11, has equated "not well-grounded in fact" with "frivolous". *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir. 1991). *Townsend* states:

> The word "frivolous" does not appear anywhere in the text of [Rule 11]; rather, it is a shorthand that this court has used to denote a filing that is both baseless and made without a reasonable and competent inquiry.

The Ninth Circuit, having reconciled the term "frivolous" and "not well grounded in fact", appears to have anticipated the logic of the United States in its amicus curiae brief.

DATED: February 13, 1992

Respectfully submitted,

DANIEL E. LUNGREN, Attorney General
of the State of California
GEORGE WILLIAMSON
Chief Assistant Attorney General
KENNETH C. YOUNG
Assistant Attorney General
JOAN W. CAVANAGH, Supervising
Deputy Attorney General

JAMES CHING, Supervising
Deputy Attorney General
Counsel of Record

Attorneys for Petitioners

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY)
OF SACRAMENTO)

CYNTHIA BAIN, being first duly sworn on oath deposes and states:

I am 18 years of age or older and not a party to the within entitled cause; my business address is 1515 K Street, Suite 511, Sacramento, California 95814.

On February 14, 1992, I served the attached **PETITIONERS' SUPPLEMENTAL BRIEF** in said cause, by placing three true copies thereon fully prepaid, in the United States mail at Sacramento, California, addressed as follows:

ELIZABETH ALEXANDER
American Civil Liberties
Union Foundation
1875 Connecticut Avenue, NW
Washington, D.C. 20009

RICHARD W. NICHOLS
555 Capitol Mall, Suite 950
Sacramento, CA 95814

WILLIAM K. KELLY
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530

Cynthia Bain
AFFIANT

Subscribed and sworn to before
me this 14th day of February, 1992.

Rosalind Zender
Notary Public in and for said County and State

ROSALIND ZENDER
NOTARY PUBLIC – CALIFORNIA
COUNTY OF SACRAMENTO
My Commission Expires March 14, 1995